

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1224

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 77-1224

UNITED STATES OF AMERICA,

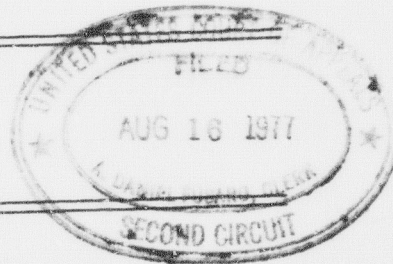
-vs.-

FRANK TILLMAN LEWIS,
Defendant-Appellant.

B
P/S

On Appeal From The United States District Court
For The Eastern District Of New York

APPELLANT'S APPENDIX



HENRY J. BOITEL
Assigned Counsel for Appellant
Frank Tillman Lewis
233 Broadway
New York, New York 10007
(212) RE 2-8104

HONORABLE DAVID G. TRAGER
United States Attorney for the
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201
(212) 330-7550

PAGINATION AS IN ORIGINAL COPY

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PETTY OFFENSE
OTHER MINOR OFFENSE
OTHER MISDEMEANOR
FELC

77CR 54

FRANK TILLMAN LEWIS

U.S. TITLE/SECTION
18:2113(a)(d)

OFFENSES CHARGED
Bank robbery and use of a
dangerous weapon

Case Filed
Day 31
Month 77

PLAT

U.S. MAG
CASE NO.

BAIL

AMT
Dated
Set

\$100,000

Date

1-15-77

Bail Not Made

Status Change
(See Docket)

Disposition
of Charge

3-7-77

Convicted

Acquitted

Dismissed

On Govern

II. KEY DATES & INTERVALS

ARREST or	INDICTMENT	ARRAIGNMENT	TRIAL
U.S. Custody Begun	High Risk Date	1-31-77	2/4/77
Summons Served	Indict Waived	2/7/77	2/2/77
First Appearance	In Charging District	2/7/77	3/2/77
1-15-77			

Search Warrant	Issued	DATE	INITIAL/NO	INITIAL APPEARANCE DATE	INITIAL/NO	OUTCOME
Summons <td>Served <td>1-6-77</td> <td>ASC/07E</td> <td>1-25-77</td> <td></td> <td>X HELD FOR QJ OR OT CEEDING IN THIS DC</td> </td>	Served <td>1-6-77</td> <td>ASC/07E</td> <td>1-25-77</td> <td></td> <td>X HELD FOR QJ OR OT CEEDING IN THIS DC</td>	1-6-77	ASC/07E	1-25-77		X HELD FOR QJ OR OT CEEDING IN THIS DC
Arrest Warrant Issued	1-6-77	ASC/07E				HELD FOR QJ OR OT CEEDING IN DISTIC
COMPLAIN						
OFFENSE (In Complaint)						

Bank Robbery. T-18 USC Sections 2113(a) and 2113(d)

U.S. Attorney or Asst

C.Schwartz

ATTORNEYS

Defense ☐ CJA ☐ Ret. ☐ Waived ☐ Self ☐ None ☒ Other

Edward Kelly, Esq.

(LAS)

Chris Termini, Esq.

Quinones 2

DATE	(DOCUMENT NO)	PROCEEDINGS
1-25-77		Hearing held. Witness for Gov't Leo Farrell - FBI agent of Bank Robbery Squad. Outcome bail continued. Deft held for District Court Probable cause found.
1-31-77		Before CHREIN J - Indictment filed.
2-4-77		Before PLATT, J - Case called - deft & atty present - Deft waives reading of the indictment and enters a plea of not guilty - adjd to 2-18-77 to set a date for trial - court orders bail increased to \$500,000 surety.
2-7-77		SUPERSEDING INDICTMENT FILED (S)
2-8-77 k		Notice of motion filed for suppressing evidence
2-8-77		Letter filed dated 2-8-77 received from Chambers from Cheryl Schwartz, AUSA(re adjournment etc)
2-11-77		Before BRAMWELL, J - case called - deft & counsel Edward Kelly present - Deft arraigned and enters a plea of not guilty - bail fixed at \$500,000.00 vsurety bond - case adjd to 2-18-77 for all purposes before Judge Platt
2-22-77		Before PLATT, J - case called - deft & counsel E. Kelly present - trial set down for 3-2-77 at 9:30 am.

COURT
VS

V
FRANK TILLMAN LEWIS

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELA			
	(Document No.)	(a)	(b)	(c)	(d)
5/12/77	Notice of appeal filed. (Re: for contempt proceedings duplicate copy of notice w/ docket entries mailed to C of A.JLJ)				
5-12-77	Before PLATT, J - Case called - deft & atty Chris Termini present - The court having found the deft Frank Tillman Lewis in contempt for failure to answer questions when directed to do so by the Court on May 10, 1977 during the trial of U.S.A. vs. Robinson Quinones, IT IS ADJUDGED on the citation for contempt that the deft is hereby committed to the custody of the AttyGeneral or his authorized representative for imprisonment for a term of 6 months.				
5.16.77	Certified Copy of Judgment and Commitment returned and filed from Marshal. 2 Certified Copies of Judgment and Commitment Order to M.C.C., New York 5.16.77.				
6-3-77	Scheduling order received from the court of appeals filed that the record on appeal be filed on or before June 20, 1977.				

A TRUE COPY
DATED 6/6 1977
BY *[Signature]* CLERK
DEPUTY CLERK

TRP:CMS:sj
F# 771,069

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

77CR

54

UNITED STATES OF AMERICA

- against -

FILED

SUPERSEDING INDICTMENT

IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.

FRANK TILLMAN LEWIS and
ROBINSON QUINONES, ★

FEB 7 1977

NY No. 77 CR 54(S)
(T. 18, U.S.C., §3371,
2113(a), 2113(d) and 2)

Defendants. TIME A.M.
P.M.

----- X

THE GRAND JURY CHARGES:

77CR

54

COUNT ONE

Commencing at a time unknown to the grand jury and continuing until at least the 3rd day of January 1977, within the Eastern District of New York, the defendant FRANK TILLMAN LEWIS and the defendant ROBINSON QUINONES did knowingly and willfully conspire to commit offenses against the United States, in violation of Title 18, Sections 2113(a) and 2113(d), United States Code, by conspiring to take, by force, violence and intimidation, from the person and presence of employees of the Barclay Bank of New York, 2215 Church Avenue, Brooklyn, New York, approximately Eleven Thousand Eight Hundred Twenty-two Dollars and Ninety-one Cents (\$11, 822.91), in United States currency, which money was in the care, custody, control, management and possession of the said Barclay Bank of New York, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation and in commission of this act and offense, the defendant FRANK TILLMAN LEWIS and the defendant ROBINSON QUINONES conspired, to assault and place in jeopardy the lives of the bank employees, as well as the lives of other persons present by the use of a dangerous weapon. (Title 18, United States Code, Section 371.)

In furtherance of the said unlawful conspiracy and for the purpose of effecting the objectives thereof, the defendant

FRANK TILLMAN LEWIS and the defendant ROBINSON QUINONES committed the following

O V E R T A C T S

1. On or about January 3, 1977, within the Eastern District of New York, the defendant ROBINSON QUINONES hired a limousine.

2. On January 3, 1977, within the Eastern District of New York, the defendants FRANK TILLMAN LEWIS and ROBINSON QUINONES employed said limousine to take them to the above-described Barclay Bank, which they then entered and robbed, and to take them away from the bank after said robbery.

COUNT TWO

On or about the 3rd day of January 1977, within the Eastern District of New York, the defendant FRANK TILLMAN LEWIS and the defendant ROBINSON QUINONES knowingly and wilfully, by force, violence and intimidation, did take from the person and presence of employees of the Barclay Bank of New York, 2215 Church Avenue, Brooklyn, New York, approximately Eleven Thousand Eight Hundred Twenty-two Dollars and Ninety-one Cents (\$11,822.91), in United States currency, which money was in the care, custody, control, management and possession of the said Barclay Bank of New York, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation and in commission of this act and offense the defendant FRANK TILLMAN LEWIS and the defendant ROBINSON QUINONES did assault and place in jeopardy the lives of the said bank employees, as well as the lives of other persons present by the use of a dangerous weapon. (Title 18, United States Code, Sections 2113(d) and 2.)

COUNT THREE

On or about the 3rd day of January 1977, within the Eastern District of New York, the defendant FRANK TILLMAN

LEWIS and the defendant ROBINSON QUINONES knowingly and wilfully, by force, violence and intimidation, did take from the person and presence of employees of the Barclay Bank of New York, 2215 Church Avenue, Brooklyn, New York, approximately Eleven Thousand Eight Hundred Twenty-two Dollars and Ninety-one Cents (\$11,822.91), in United States currency, which money was in the care, custody, control, management and possession of the said Barclay Bank of New York, the deposits of which bank were, then and there insured by the Federal Deposit Insurance Corporation. (Title 18, United States Code, Section 2113(a) and 2.)

A TRUE BILL

Joseph A. Palladino
FOREMAN.

David G. Trager

DAVID G. TRAGER
United States Attorney
Eastern District of New York

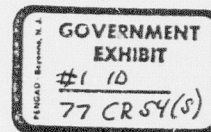
P. #771020

The President of the United States of America

TO ANY SPECIAL AGENT OF THE FEDERAL BUREAU OF INVESTIGATION AND/OR
To the Marshal of the United States for the Eastern District of New York and to his Deputies or any
or either of them—GREETING:

WHEREAS, complaint on oath hath been made to me, charging that

FRANK TILLMAN LEWIS



did on or about the 2nd day of January, in the year
one thousand nine hundred and seventy-seven, at the Eastern District of New York,
2113(a) &
in violation of Sections 2113(a), Title 18, did knowingly, wilfully and
feloniously, by force, violence and intimidation rob the Barclay
Bank of New York, 2213 Church Avenue, Brooklyn, New York, a
federally insured bank, and did assault and place in jeopardy
the lives of the employees of said bank, as well as the lives of
of other persons present by use of a dangerous weapon.

as set forth in the complaint this day filed in my office, a certified copy of which is hereto attached,
against the peace of the United States and their dignity, and against the form of the statute of the
United States in such case made and provided.

NOW, THEREFORE, YOU ARE HEREBY COMMANDED, in the name of the President of the
United States of America, to apprehend the said FRANK TILLMAN LEWIS

and bring his body forthwith before me, or some judge of the United States,
wherever he may be found that he
may then and there be dealt with according to law for the said offense.

Given under my hand and seal, this 6th day of January
in the year of our Lord one thousand nine hundred and seventy-seven

APPROVED:

[Signature]

United States Attorney
of the Eastern District of New York.

United States Magistrate
of the Eastern District of New York.

RED:CMS:sd
F. #771020

77/15

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
UNITED STATES OF AMERICA

U.S.C. Title 18
Sections 2113(a)
2113(d)

- against -

FRANK TILLMAN LEWIS,

Defendant.

77/15

----- X
EASTERN DISTRICT OF NEW YORK, SS:

*Correct
arrest
dated
1/6/77
2:30 PM*

LEO FARRELL, being duly sworn, deposes and says
that he is a Special Agent of the Federal Bureau of In-
vestigation, duly appointed according to law and acting
as such.

On or about the 3rd day of January, 1977, within
the Eastern District of New York, the defendant FRANK
TILLMAN LEWIS did knowingly, wilfully and feloniously, by
force, violence and intimidation take from the person and
presence of employees of the Barclay Bank of New York,
2215 Church Avenue, Brooklyn, New York approximately Eleven
Thousand Dollars (\$11,000.00) in United States currency,
which money was in the care, custody, control, management
and possession of the said Barclay Bank of New York, the
deposits of which bank were then and there insured by the
Federal Deposit Insurance Corporation; and in the commission
of this act and offense, the defendant FRANK TILLMAN LEWIS
did assault and place in jeopardy the lives of the afore-
said bank employees, as well as the lives of other persons
present by the use of a dangerous weapon. (Title 18,
United States Code, Sections 2113(a) and 2113(d)).

The source of your deponent's information and the grounds for his belief are:

(1) Investigation conducted by your deponent and other Special Agents of the Federal Bureau of Investigation which revealed that the aforementioned bank was robbed on January 3, 1977, and that a loss of approximately \$11,000.00 occurred during the course of said robbery;

(2) A positive identification by one of the customers present during the robbery of a photograph of FRANK TILLMAN LEWIS as one of the robbers at the bank.

WHEREFORE, your deponent respectfully prays that a warrant be issued for the apprehension of the above-named defendant FRANK TILLMAN LEWIS that he may be dealt with according to law.

Leo Farrell

Sworn to before me this
6th day of January 1977

[Signature]
United States Magistrate
Eastern District of New York

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x

UNITED STATES OF AMERICA, :

- against - :

77 CR 54

FRANK TILLMAN LEWIS, :

Defendant. :

----- x

United States Courthouse
Brooklyn, New York

March 7, 1977
9:30 o'clock a.m.

B e f o r e :

HONORABLE THOMAS C. PLATT, U.S.D.J.

HENRI LE GENDRE
Acting Official Court Reporter

leG/ss

1 THE COURT: All right, ladies and gentlemen,
2 rather than have a recess, we'll proceed with
3 instructions on the law and that will enable you to
4 get a longer time for your deliberations.

5 Now, it's my practice to read the instructions
6 on the law to you. I realize this makes it more
7 difficult for you to follow, but it also minimizes
8 the risk of error, so I beg your indulgence and ask
9 you to pay particular attention and close attention
10 to what I have to say. If my voice falls off and any
11 of you have any difficulty in hearing what I say,
12 let me know, wave your hand, or otherwise let me
13 know that you are not getting it all.

14 Now that you have heard the evidence and the
15 arguments, it becomes my duty to give the instructions
16 of the Court as to the law applicable to this case.

17 It is your duty as jurors to follow the law
18 as stated in the instructions of the Court, and to
19 apply the rules of law so given to the facts as you
20 find them from the evidence in the case. You are
21 not to single out one instruction alone as stating
22 the law, but must consider the instructions as a whole

23 Neither are you to be concerned with the
24 wisdom of any rule of law stated by the Court.
25 Regardless of any opinion you may have as to what

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2 the law ought to be, it would be a violation of your
3 sworn duty to base a verdict upon any other view of
4 the law than that given in the instructions of the
5 Court; just as it would be a violation of your sworn
6 duty, as judges of the facts, to base a verdict upon
7 anything but the evidence in the case. You must not
8 permit yourselves to be governed by sympathy, bias,
9 prejudice or any other consideration not founded on
10 evidence and these instructions on the law.

11 Now, you have been chosen and sworn as jurors
12 in this case to try the issues of fact presented by
13 the allegations of the indictment and the denial
14 made by the "not guilty" plea of the accused.

15 You are to perform this duty without bias or
16 prejudice as to any party, again the law does not
17 permit jurors to be guided by sympathy, prejudice or
18 public opinion. Both the accused and the public
19 expect that you will carefully and impartially
20 consider all the evidence in the case, follow the
21 law as stated by the Court and reach a just verdict,
22 regardless of the consequences.

23 Now, I'm not going to send the exhibits which
24 have been received in evidence with you as you
25 retire for your deliberations. You are entitled,

1
2 however, to see any or all of these exhibits as you
3 consider your verdict.

4 I suggest that you begin your deliberations
5 and then, if it would be helpful to you, you may
6 ask for any or all of the exhibits simply by sending
7 a note to me through one of the deputy marshals who
8 will be stationed outside your jury room door.

9 Both counsel in their summations have made
10 references to requests for read back of testimony.
11 Now, my instructions to you with respect to that,
12 which counsel don't seem to absorb very well though
13 many have heard it before is that you should not
14 ask for read backs of testimony until you have
15 given the entire evidence a fair consideration. For
16 the same reason that you must consider the
17 instructions on the law as a whole, you should
18 consider the evidence as a whole. If you come in
19 and ask for a particular portion of a particular
20 witness' testimony read back, then you are going to
21 highlight in your mind that particular portion over
22 and above the other testimony in the case, and it
23 is your duty to consider both the instructions on
24 the law and the testimony as a whole, not piecemeal.
25 Of course, if you reach an impasse and you find you

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2 must have a portion of the particular witness'
3 testimony read back, you may have it read back, or
4 if you wish a portion of the instructions read to
5 you, you may have those read back, but try to
6 consider them as a whole and not put undue emphasis
7 on one particular piece of evidence as against all
8 of the evidence.

9 An indictment is but a formal method of
10 accusing a defendant of a crime. As I told you
11 before, it is not evidence of any kind of action
12 against the accused.

13 There are two types of evidence from which
14 a jury might properly find a defendant guilty of
15 a crime, one is direct evidence such as the
16 testimony of an eye-witness; the other is what we
17 call circumstantial evidence, the proof of facts
18 and circumstances which rationally imply the
19 existence or non-existence of other facts because
20 such other facts usually follow the common experience
21 of mankind.

22 By way of example, the footprint of a man in
23 the sand implied to Robinson Crusoe that there was
24 another man with him on the desert island, and
25 indeed there was, the man Friday. Thus, on the one

1
2 hand you may have direct evidence of the issue and,
3 on the other hand, you may have circumstantial
4 evidence of the issue. The law does not hold that
5 one type of evidence is necessarily of better
6 quality than the other. The law requires only that
7 the Government prove its case beyond a reasonable
8 doubt, both on the direct and circumstantial evidence.

9 At times, the jury may find that circumstantial
10 evidence is the better quality and at other times,
11 they may find that direct evidence is of better
12 quality, that judgment is left entirely up to you.

13 As a general rule, the law makes no distinction
14 between direct and circumstantial evidence, but
15 simply requires that before convicting a defendant,
16 the jury must be satisfied of the defendant's guilt
17 beyond a reasonable doubt from all the evidence in
18 the case.

19 The law presumes the defendant to be innocent
20 of crime, thus a defendant, although accused, begins
21 a trial with a clean slate with no evidence against
22 him, and the law permits nothing but legal evidence
23 presented before the jury to be considered in
24 support of any charge against the accused.

25 So, the presumption of innocence alone is

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2 sufficient to acquit a defendant, unless the
3 jurors are satisfied beyond a reasonable doubt of
4 the defendant's guilt after careful and impartial
5 consideration of all the evidence in the case.

6 The burden is always upon the prosecution to
7 prove the guilt beyond a reasonable doubt. This
8 burden never shifts to a defendant; for the law
9 never imposes upon a defendant in a criminal case
10 the burden or duty of calling any witnesses or
11 producing any evidence.

12 Now, a reasonable doubt does not mean a doubt
13 arbitrarily and capriciously asserted by a juror
14 because of his or her reluctance to perform an
15 unpleasant task. It does not mean a doubt arising
16 from the natural sympathy which we all have for
17 others. It is not necessary for the Government to
18 prove the guilt of the defendant beyond all possible
19 doubt. Because if that was the rule, very few people
20 would ever be convicted. It is practically impossible
21 for a person to be absolutely sure and convinced of
22 any contraverted fact which, by its nature, is not
23 susceptible of mathematical certainty.

24 In consequence, the law says that a doubt
25 should be reasonable doubt, not a possible doubt.

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2 A reasonable doubt is a doubt based upon
3 reason and common sense, the kind of doubt that
4 would make a reasonable person hesitate to act. Proof
5 beyond a reasonable doubt must therefore be proof of
6 such a convincing character that you would be willing
7 to rely and act upon it unhesitatingly in the most
8 important of your own affairs.

9 The jury will remember that a defendant is
10 never to be convicted upon mere suspicion or
11 conjecture.

12 Again, a reasonable doubt means a doubt
13 sufficient to cause a prudent person to act in the
14 most important affairs of his or her life, it is
15 the kind of doubt that is based on reason and
16 common sense. The requirement of proof beyond a
17 reasonable doubt operates on the whole case and not
18 on the separate bits of evidence, each individual
19 item or evidence need not be proven beyond a
20 reasonable doubt.

21 Now, I'm going to discuss the counts of the
22 indictment with you in reverse order, that is, I am
23 going to discuss Count 3 of the indictment first;
24 Count 2, second; and Count 1, the conspiracy count
25 last. That is not to suggest that you necessarily

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2 should consider them in that order but for the
3 purposes of these instructions it's easier for me
4 to give them to you, so you'll be able to follow
5 them if I take them in reverse order.

6 Count 3 of the indictment provides that on
7 or about the 3rd day of January, 1977, within the
8 Eastern District of New York, the defendant Frank
9 Tillman Lewis and co-conspirator Robinson Quinones,
10 knowingly and willfully, by force, violence and
11 intimidation, did take from the person and presence
12 of employees of the Barclay's Bank of New York,
13 2215 Church Avenue, Brooklyn, New York, approximately
14 \$11,822.91 in United States currency, which money
15 was in the care, custody, control, management and
16 possession of the said Barclay's Bank, the deposit
17 of which bank were then and there insured by the
18 FDIC, all in violation of the United States Code,
19 Section 2113(a) and Section 2.

20 Now, Section 2113(a), which is the statute
21 alleged to have been violated, reads in pertinent
22 part as follows:

23 "Whoever, by force and violence, or by
24 intimidation, takes, or attempts to take from the
25 person or presence of another any property or money or

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2 any other thing of value belonging to, or in the care,
3 custody, control, management, or possession of any
4 bank, or any savings and loan association shall be
5 in violation of law."

6 In this count, the Government also alleges
7 a violation of Section 2 of Title 18 of the United
8 States Code, which is the so-called aiding and
9 abetting section, and that section reads as follows:

10 "Whoever commits an offense against the
11 United States or aids, abets, counsels, commands,
12 induces or procures its commission, is punishable
13 as a principal.

14 "Whoever willfully causes an act to be done
15 which, if directly performed by him or another, would
16 be an offense against the United States, is punishable
17 as a principal."

18 The essential elements of the crime charge
19 in Count 3 of the indictment which must be proved
20 beyond a reasonable doubt of:

21 (1) The act or acts of taking from the
22 person or presence of another money belonging to
23 or in the care, custody, control, management or
24 control of any bank is charged.

25 (2) The act or acts of taking by force and

1
2 violence, or by intimidation;

3 (3) The doing of such an act or acts knowingly
4 and willfully;

5 (4) That the bank was a bank that the
6 deposits of which were insured by the FDIC.

7 Now, it is charged in Count 2 of the indictment,
8 going backwards, that on or about the 3rd day of
9 January, 1977, within the Eastern District of New
10 York, the defendant Frank Tillman Lewis and co-
11 conspirator, Robinson Quinones, knowingly and
12 willfully by force, violence and intimidation did
13 take from the person and presence of employees of
14 the Barclay's Bank of New York, 2215 Church Avenue,
15 Brooklyn, New York, approximately \$11,822.91 in
16 U.S. Currency, which money was in the care, custody,
17 control, management, possession of the Barclay's
18 Bank of New York, deposits of which bank were then
19 and there insured by the FDIC; and in commission of
20 this act and offense, the defendant Frank Tillman
21 Lewis and the co-conspirator Robinson Quinones did
22 assault and place in jeopardy the lives of said
23 bank employees as well as the lives of other persons
24 present by the use of a dangerous weapon, all in
25 violation of Title 18, United States Code, Section

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2 2113(d), and Section 2, the aiding and abetting
3 section.

4 Now, 2113(d) provides in further part:

5 "Whoever, in committing, or in attempting to
6 commit, any offense defined in Subsection 2113(a)" -
7 which is what I read to you in connection with
8 Count 3 of this section-- "assaults any person, or
9 puts in jeopardy the life of any person by the use of
10 a dangerous weapon or device shall be in violation of
11 the law."

12 Then, as I indicated, this section also
13 charges a violation of Section 2, the so-called
14 aiding and abetting section about which I will talk
15 to you more in a moment.

16 Now, Count 2 also charges the following of
17 the essential elements of the crime which is required
18 to be proved beyond a reasonable doubt in order to
19 establish the offense charged in Count 2 of the
20 indictment.

21 (1) The act or acts of taking from the
22 presence or person of another, money belonging to,
23 or in the care, custody, management, possession of
24 any bank as charged;

25 (2) The act or acts of taking by force and

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2 violence, or by intimidation;

3 (3) The act or acts of assulting or putting
4 in jeopardy the life of any person by the use of a
5 dangerous weapon or device while engaged in taking
6 such money from the bank is charged;

7 (4) Doing said act knowingly or willfully;

8 (5) The bank, the deposits of which were
9 under the insure of the FDIC.

10 As used in Section 2113, the term bank means
11 any bank deposits which are under the insure of FDIC.

12 You recall at the outset one of the Government
13 witnesses testified that the Barclay's Bank deposits
14 were so insured, I believe it may have been an
15 exhibit which was introduced, but your recollection
16 controls as to that.

17 Now, the words "to take by intimidation" are
18 used in both counts 3 and 2. To take or attempt to
19 take, "by intimidation" means willfully to take, or
20 attempt to take, by putting in fear of bodily harm.
21 Such fear must arise from the willful conduct of
22 the accused, rather than from some mere temperamental
23 timidity of the victim; however, the fear of the
24 victim need not be so great as to result in terror,
25 panic, or hysteria.

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2 A taking, or an attempted taking, "by
3 intimidation" must be established by proof of one or
4 more acts or statements of the accused which were
5 done or made, in such a manner, and under such
6 circumstances, as would produce in the ordinary
7 person fear of bodily harm.

8 However, actual fear need not be proved. A
9 fear, like intent, may be inferred from statements
10 made or acts done or omitted by the accused, and
11 by the victim as well; and from all the surrounding
12 circumstances shown by the evidence in the case.

13 Now, in Count 2, the word "assault" is used.
14 If the jury should find beyond a reasonable doubt
15 from the evidence in the case that the accused did
16 willfully commit robbery of the bank, as charged,
17 then the jury must proceed to determine whether the
18 evidence in the case establishes that the accused,
19 in committing the robbery of the bank, assaulted or
20 put in jeopardy the lives of the said bank employees,
21 as well as the lives of other persons present, as
22 charged in the indictment.

23 Any willful attempt or threat to inflict
24 injury upon the person of another, when coupled with
25 an apparent present ability to do so, or any intentional

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2 display of force such as would give the victim reason
3 to fear or expect immediate bodily harm, constitutes
4 an assault. An assault may be committed without
5 actually touching, or striking, or doing bodily
6 harm to the person of another.

7 So, a person who has the apparent present
8 ability to inflict bodily harm or injury upon
9 another person, and willfully attempts or even
10 threatened to inflict such bodily harm, as by
11 intentionally flourishing or pointing a pistol or
12 gun at another person, may be found to have assaulted
13 such person.

14 Now, a "dangerous weapon or device" includes
15 anything capable of being readily operated, manipulated,
16 wielded, or otherwise used by one or more persons to
17 inflict severe bodily harm or injury upon another
18 person. So, an operable firearm, such as a pistol,
19 revolver, or other "gun", capable of firing a bullet
20 or other "ammunition," may be found to be a dangerous
21 weapon or device.

22 To "put in jeopardy the life" of a person "by
23 the use of a dangerous weapon or device" means, then,
24 to expose such person to a risk of death, or to the
25 fear of death, by the use of such dangerous weapon or

1
2 device.

3 Any variance between the allegations of the
4 indictment and the evidence in the case as to the
5 size and type of any firearm or gun which may have
6 been involved in the commission of the alleged offense,
7 is immaterial except on the issue of identification,
8 when then, of course, it's not immaterial on that
9 issue.

10 (Continued next page.)
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LeG:ss

Now, I said I would talk to you more about the Section 2, or the so-called aiding and abetting section, which you will recall provides "whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal."

And, "Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States is punishable as a principal."

The guilt of a defendant may be established without proof that the accused person did ever act constituting the act charged. In other words, every person who willfully participates in the commission of a crime may be found guilty of that offense. Participation is willful if done voluntarily and intentionally, and with a specific intent to do something the law forbids, or with a specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

In order to aid and abet another to commit a crime, it is necessary that the accused willfully associate himself in some way with the criminal

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2 venture, and willfully participate in it as he would
3 in something he wishes to bring about; that is to
4 say, that he willfully seek by some act or omission
5 of his to make the criminal venture succeed.

6 An act or omission is "willfully" done if
7 done voluntarily and intentionally and with specific
8 intent to do something the law forbids, or with the
9 specific intent to fail to do something the law
10 requires to be done; that is to say, with bad purpose
11 either to disobey or to disregard the law.

12 You, of course, may not find the defendant
13 guilty unless you find beyond a reasonable doubt that
14 every element of the offense as defined in these
15 instructions was committed by some person or persons,
16 and that the defendant participated in its commission.

17 Mere presence at the scene of the crime and
18 knowledge that a crime is being committed are not
19 sufficient to establish that the defendant aided and
20 abetted the crime, unless you find beyond a reasonable
21 doubt that the defendant was a participant and not
22 merely a knowing spectator.

23 The crime charged in this case is a serious
24 crime which requires proof of specific intent before
25 the defendant can be convicted; specific intent is

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2 a term which implies more than the general intent to
3 commit the act.

4 The Government must prove knowingly did an
5 act which the law forbids or knowingly failed to do
6 something which the law requires to be done. Such
7 intent may be determined through all the facts and
8 circumstances surrounding the case.

9 An act is done "knowingly" if done voluntarily
10 and intentionally, and not because of mistake or
11 accident or other innocent reason.

12 The purpose of adding the word "knowingly" was
13 to insure that no one would be convicted for an act
14 done because of mistake, or accident, or other
15 innocent reason.

16 An act is done "willfully" if done voluntarily
17 and intentionally, and with the specific intent to
18 do something the law forbids; that is to say, with
19 bad purpose either to disobey or to disregard the
20 law.

21 Knowledge and intent may not be proved
22 directly because there is no way of fathoming or
23 scrutinizing the operation of the human mind, but
24 you may infer the defendant's knowledge and intent
25 from the surrounding circumstances. You may consider

any statement made and done or omitted by the defendant and all other facts and circumstances in evidence which indicate his state of mind.

Now, it's charged in Count 1 of the indictment that commencing at a time unknown to the Grand Jury and continuing until at least the 3rd day of January, 1977, within the Eastern District of New York, the defendant Frank Tillman Lewis and co-conspirator Robinson Quinones, did knowingly and willfully conspire to commit offenses against the United States in violation of Title 18, Section 2113(a), and 2113(b) which are the two sections I previously read to you.

By conspiring to take by force, violence and intimidation from the person and presence of employees of the Barclay's Bank of New York, 2215 Church Avenue, Brooklyn, New York, approximately \$11,882.91 in U.S. Currency, which money was in the care, custody, control, management and possession of the said Barclay's Bank of New York, the deposits of which were then and there insured by FDIC; and in commission of this act, the defendant Frank Tillman Lewis and co-conspirator Robinson Quinones placed the lives of the bank employees as well as the lives of other persons present by the use of a dangerous weapon, all

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2 in violation of Title 18, United States Code Section
3 371, which I will read to you in a moment.

4 In furtherance of the said unlawful conspiracy
5 and for the purpose of affecting the objectives
6 thereof, the defendant Frank Tillman Lewis and the
7 defendant Robinson Quinones committed the following
8 overt acts:

9 (1) On or about January 3, 1977, within the
10 Eastern District of New York, the defendant Robinson
11 Quinones hired a limousine;

12 (2) On January 3, 1977, within the Eastern
13 District of New York, the defendants Frank Tillman
14 Lewis and Robinson Quinones employed said limousine
15 to take them to the above described Barclay's Bank,
16 which they then entered and robbed, and to take them
17 away from the bank after said robbery.

18 (Continued next page.)
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Now, Section 371 of Title 18 of United States Code provides in pertinent part that:

"If two or more persons conspire either to commit any offense against the United States or any agency thereof in any manner or for any purpose, and one or more of such persons do act to effect the object of the conspiracy, each shall be in violation of the law."

The following are the essential elements which are to be required to be proven beyond a reasonable doubt in order to establish the offense of the conspiracy charged in the indictment:

(1) That there was an agreement or conspiracy between two or more persons to violate the law as charged in the indictment;

(2) That the conspiracy described was willfully formed and existing at or about the time alleged;

(3) That the conspiracy was so willfully formed and existing at or about the time alleged;

(4) That the conspiracy was so willfully formed and existing by force, violence and intimidation from the person and presence of the employees, moneys which were in the care of said bank, the deposits of which were then and there insured by the

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2 FDIC, or for the purpose of assaulting and placing in
3 jeopardy the lives of the employees of said bank as
4 well as the lives of said persons present by the use
5 of a dangerous weapon;

6 (5) That the defendant willfully became a
7 member of the conspiracy;

8 (6) That one of the conspirators knowingly
9 committed one of the overt acts charged in the
10 indictment at or about the time and place alleged;

11 (7) That such overt act was knowingly done in
12 furtherance of the object of the conspiracy charged;

13 (8) That the defendant was knowingly and
14 willfully a member of the conspiracy with the intent
15 to further one of its objectives.

16 If the jury should find beyond a reasonable
17 doubt from the evidence in the case that the
18 existence of the conspiracy charged in the indictment
19 has been proven, and that during the existence of
20 the conspiracy one of the overt acts alleged was
21 knowingly done by one or more of the conspirators in
22 furtherance of some object or purpose of the
23 conspiracy, then proof of the conspiracy offense
24 charged is complete, and it is complete as to every
25 person found by the jury to have been willfully a

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2 member of the conspiracy at the time the overt act
3 was committed.

4 Now, what is a conspiracy? A conspiracy is
5 a combination of two or more persons, by concerted
6 action, to accomplish some unlawful purpose. So,
7 a conspiracy is a kind of partnership in criminal
8 purposes, in which each member becomes the agent of
9 every other member. The gist of the offense is a
10 combination or agreement to disobey, or to disregard
11 the law.

12 Mere similarity of conduct among various
13 persons, and the fact they may have associated with
14 each other, and may have assembled together and
15 discussed common aims and interest, does not
16 necessarily establish proof of the existence of a
17 conspiracy. Mere association may not, in and of
18 itself, be the basis for an inference of guilt of a
19 conspiracy.

20 However, the evidence in the case need not
21 show that the members entered into any express or
22 formal agreement, or that they directly, by words
23 spoken or in writing, stated between themselves what
24 their object or purpose was to be, or the details
25 thereof, or the meetings by which the object or

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2 purpose was to be accomplished.

3 What the evidence in the case must show
4 beyond a reasonable doubt, in order to establish proof
5 that a conspiracy existed, is that the members in
6 some way or manner, or through some contrivance,
7 positively or tacitly came to a mutual understanding
8 to try to accomplish a common and unlawful plan.

9 The evidence in the case need not establish
10 that all the means or methods set forth in the
11 indictment were agreed upon to carry out the alleged
12 conspiracy; nor that all means or methods which were
13 agreed upon were actually used or put into operation;
14 not that all of the persons charged to have been
15 members of the alleged conspiracy was such.

16 What the evidence in the case must establish
17 beyond a reasonable doubt is that the alleged
18 conspiracy was knowingly formed, and that one or more
19 of the means or methods described in the indictment
20 were agreed upon to be used, in an effort to effect
21 or accomplish some object or purpose of the
22 conspiracy, as charged in the indictment; and that
23 two or more persons, including the accused, were
24 knowingly members of the conspiracy as charged in the
25 indictment.

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2 In your consideration of the evidence in the
3 case as to the offense of conspiracy charge, you
4 should first determine whether or not the conspiracy
5 existed as alleged in the indictment. If you
6 conclude that the conspiracy did exist, you should
7 next determine whether or not the accused willfully
8 became a member of the conspiracy.

9 If it appears beyond a reasonable doubt from
10 the evidence in the case that the conspiracy alleged
11 in the indictment was willfully formed, and that a
12 defendant willfully became a member of the conspiracy
13 either at its inception or afterwards, and that
14 thereafter one or more of the conspirators committed
15 one or more overt acts in furtherance of some object
16 or purpose of the conspiracy, then there may be a
17 conviction even though the conspirators may not have
18 succeeded in accomplishing their common object or
19 purpose, and in fact, may have failed in so doing.

20 The extent of any defendant's participation
21 moreover is not determinative of his guilt or
22 innocence. A defendant may be convicted as a
23 conspirator even though he may have played only a
24 minor part in the conspiracy.

25 An "overt act" is any act knowingly committed

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2 by one of the conspirators in an effort to effect
3 or accomplish some object or purpose of the
4 conspiracy. The overt act need not be criminal in
5 nature, if considered separately and apart from the
6 conspiracy. It may be as innocent as the act of a
7 man walking across the street, or driving an
8 automobile, or using a telephone. It must, however,
9 be an act which follows and tends towards
10 accomplishment of the plan or scheme. It must be
11 knowingly done in furtherance of some object or
12 purpose of the conspiracy charged in the indictment.

13 When they become a member of a conspiracy
14 without full knowledge of all the details of the
15 conspiracy. In the other hand, a person who has no
16 knowledge of a conspiracy, but happens to act in a
17 way which furthers some object or purpose of the
18 conspiracy, does not thereby become a conspirator.

19 Before the jury may find the defendant or
20 any other person has become a member of the conspiracy,
21 the evidence in the case must show beyond a reasonable
22 doubt that the conspiracy was knowingly formed, and
23 that the defendant or other person who claimed to
24 have been a member willfully participated in the
25 unlawful plan, with the intent to advance or further

1
2 some object or purpose of the conspiracy.

3 To act or participate willfully means to
4 act or participate voluntarily or intentionally and
5 with specific intent to do something the law forbids
6 ... that is to say to act or participate with the
7 bad purpose either to disobey or to disregard the
8 law. So, if a defendant or any other person, with
9 understanding of the unlawful character of the plan,
10 knowingly encourages, advises, or assists, for the
11 purpose of furthering the undertaking or scheme, he
12 thereby becomes a willful participant -- a conspirator.

13 One who willfully joins in an existing
14 conspiracy is charged with the same responsibility
15 as if he had been one of the originators or
16 instigators of the conspiracy.

17 In determining whether a conspiracy existed,
18 the jury should consider the actions and the
19 declarations of all the alleged participants.
20 However, in determining whether a particular defendant
21 was a member of a conspiracy, if any, the jury
22 should consider only his acts and statements. He
23 cannot be bound by the acts or declarations of other
24 participants until it is established that a
25 conspiracy existed, and that he was one of its

members.

Whenever it appears beyond a reasonable doubt from the evidence in the case that a conspiracy existed, and that a defendant was one of the members, then the statements thereafter knowingly made and the acts knowingly done by any person likewise found to be a member, may be considered by the jury as evidence in the case as to the defendant found to have been a member even though the statements and acts made may have occurred in the absence and without the knowledge of the defendant, provided such statements and acts were knowingly made and done during the continuancy of such conspiracy, and in furtherance of some object or purpose of the conspiracy.

Otherwise, any admission or incriminatory statement made or act done outside of the Court by one person may not be considered as evidence against any person who is not present, and did not hear the statement made or see the act done. Therefore, statements of any conspirators, which are not in furtherance of the conspiracy or made before the conspiracy or after its termination, may be considered as evidence only against the person making them.

1
2 The indictment charges a conspiracy between
3 the defendant Frank Tillman Lewis and co-conspirator
4 Robinson Quinones, both of whom are named in the
5 indictment as co-conspirators. A person cannot
6 conspire with himself, and therefore, you cannot
7 find the defendant guilty of conspiracy unless you
8 find beyond a reasonable doubt that he participated
9 in the conspiracy as charged with at least one other
10 person.

11 Now, defendant claims the Government has
12 failed to prove beyond a reasonable doubt that he
13 was one of the perpetrators of the crime. The
14 evidence in this case raises the question of whether
15 or not the defendant was in fact the criminal actor
16 or was the criminal actor; unless it necessitates
17 your resolving any conflict or testimony on that
18 issue the burden of proof is on the prosecution
19 with reference to every element of the crime charged,
20 and this burden includes beyond a reasonable doubt,
21 the identity of the defendant as one of the
22 perpetrators of the crime charged.

23 Statements and arguments of counsel are not
24 evidence in the case. I said that to you several
25 times, unless made in an admission or stipulation of

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2 fact when the attorneys on both sides stipulate or
3 agree as to the existence of a fact. You must, and
4 unless otherwise instructed, accept the stipulations
5 as evidence in to that fact as proved unless
6 you are instructed otherwise.

7 Unless you are otherwise instructed, the
8 evidence in the case always consists of the sworn
9 testimony of the witnesses, regardless of who may
10 have called them, and all exhibits received in
11 evidence regardless of who may have produced them,
12 and all facts which may have been admitted or
13 stipulated to.

14 Any evidence as to which an objection was
15 sustained by the Court and any evidence ordered
16 stricken by the Court must be entirely disregarded.
17 Evidence does include, however, what is brought out
18 from witnesses on cross-examination as well as
19 what is testified to on direct examination.

20 Unless otherwise instructed, anything you may
21 have seen or heard outside the Courtroom is not
22 evidence and must be entirely disregarded.

23 You are to consider only the evidence in the
24 case and your verdict is to be based on the evidence
25 only. But, in your consideration of the evidence,

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2 you are not limited to the bald statements of the
3 witnessas. In other words, you are not limited
4 solely to what you see and hear as the witnesses
5 testified. You are permitted to draw from facts which
6 you find have been proved, such reasonable inferences
7 as you feel are justified in the light of experience.

8 Inferences are deductions or conclusions
9 which reason and common sense lead the jury to draw
10 from facts which have been established by evidence
11 in the case.

12 If a lawyer asks a witness a question which
13 contains an assertion of fact, you may not consider
14 the assertion as evidence of that fact; the lawyers'
15 statements are not evidence.

16 You, as jurors, are the sole judges of the
17 credibility of the witnesses and the weight their
18 testimony deserves.

19 You should carefully scrutinize all the
20 testimony given, the circumstances under which each
21 witness has testified, and every matter in evidence
22 which tends to show whether a witness is worthy of
23 belief. Consider each witness' intelligence,
24 motive and state of mind, and demeanor and manner
25 while on the stand. Consider the witness' ability

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2 to observe the matters as to which he has testified
3 and whether he impresses you as having an accurate
4 recollection of the matters.

5 Consider also any relation each witness may
6 bear to either side of the case; the manner in which
7 each witness might be affected by the verdict; and
8 the extent to which, if at all, each witness is
9 either supported or contradicted by other evidence in
10 the case.

11 Inconsistencies or discrepancies in the
12 testimony of a witness, or between the testimony of
13 different witnesses, may or may not cause the jury
14 to discredit such testimony. Two or more persons
15 witnessing an act, an incident, or a transaction
16 may see or hear it differently; an innocent
17 misrecollection, like failure of recollection, is not
18 an uncommon experience.

19 In weighing the effects of a discrepancy,
20 always consider whether it pertains to a matter of
21 importance or an unimportant detail, and whether the
22 discrepancy results from innocent error or intentional
23 falsehood.
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2 The testimony of a witness may be discredited
3 or impeached by showing that he previously made
4 statements which are not consistent with his present
5 testimony. It is the province of the jury to
6 determine the credibility, if any, to be given the
7 testimony of a witness who has been impeached. If
8 a witness is shown knowingly to have falsely sworn
9 concerning any material matter, you have a right to
10 disregard such witness' testimony and you may
11 reject all of the testimony of that witness, or
12 give that testimony such credibility as you may
13 think it deserves.

14 The law does not compel a defendant in a
15 criminal case to take the witness stand and testify,
16 no presumption of guilt may be raised nor any
17 inference of any kind may be drawn from the failure
18 of a defendant to testify.

19 As stated before, the law never imposes
20 upon a defendant in a criminal case the burden or
21 duty of calling any witness or producing any evidence.

22 It is the duty of the attorneys on each side
23 of a case to object when the other side offers
24 testimony or other evidence which the attorneys
25 believes is not properly admissible. You should not

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2 show prejudice against an attorney or his client
3 because the attorney has made objections.

4 Upon allowing the testimony or other evidence
5 to be introduced over the objection of an attorney,
6 the Court does not, unless expressly stated, indicate
7 any opinion as to the weight or effect of such
8 evidence. As stated before, the jurors are the sole
9 judges of the credibility of all witnesses and the
10 weight and effect of all evidence.

11 When the Court has sustained an objection to
12 a question addressed to a witness, the jury must
13 disregard the question entirely, and may draw no
14 inference from the wording of it, nor speculate as
15 to what the witness would have said if he had
16 been permitted to answer any question.

17 The fact that the Court has asked one or more
18 questions of a witness for clarification or
19 admissibility of evidence must not be taken by you
20 in any way as indicating that the Court has any
21 opinion as to the guilt or innocence of the
22 defendant in this case, and you are to draw no
23 inference therefrom. That determination is up to
24 you and you alone, based upon all of the facts
25 in the case and applicable law in these instructions.

1
2 You are here to determine the guilt or
3 innocence of the accused from the evidence in the
4 case. You are not called upon to return a verdict
5 as to the guilt or innocence of any other person
6 or persons.

7 So, if the evidence in the case convinces
8 you beyond a reasonable doubt of the guilt of the
9 accused, you should so find, even though you may
10 believe one or more other persons are guilty.

11 But, if any reasonable doubt remains in your
12 mind after impartial consideration of all the
13 evidence in the case, it is your duty to find the
14 accused not guilty.

15 The verdict must represent the considered
16 judgment of each juror. In order to return a
17 verdict, it is necessary that each juror agree thereto.
18 Your verdict must be unanimous.

19 It is your duty, as jurors, to consult with
20 one another and to deliberate with a view to reaching
21 an agreement, if you can do so without violence to
22 individual judgment.

23 Each of you must decide the case for himself,
24 but do so only after an impartial consideration of
25 the evidence in the case with your fellow jurors.

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2 In the course of your deliberations, do not
3 hesitate to re-examine your own views, and change
4 your opinion, if convinced it is erroneous. But
5 do not surrender your honest conviction as to the
6 weight or effect of evidence solely because of the
7 opinion of your fellow jurors, or for the mere
8 purpose of returning a verdict.

9 Remember at all times, you are not partisans.
10 You are judges, judges of the facts.

11 Your sole interest is to seek the truth from
12 the evidence in the case.

13 There is nothing peculiarly different in the
14 way a jury should consider the evidence in a criminal
15 case, from that in which all reasonable persons
16 treat any question depending upon evidence presented
17 to them. You are expected to use your good sense,
18 consider the evidence in the case for only those
19 purposes for which it has been admitted, and give it
20 a reasonable and fair construction, in the light of
21 your common knowledge of the natural tendencies
22 and inclinations of human beings.

23 If the accused be proved guilty beyond a
24 reasonable doubt, say so; if not so proved guilty,
25 say so.

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2 You must render a verdict with respect to
3 each of the three counts in the indictment that I
4 have outlined to you. If any reference by the Court
5 or by counsel as to matters of evidence does not
6 coincide with your recollection, it is your
7 recollection which should control during your
8 deliberations.

9 The punishment provided by law for the
10 offenses charged in the indictment is a matter
11 exclusively within the province of the Court and
12 should never be considered by the jury in any way
13 in arriving at an impartial verdict as to the guilt
14 or innocence of the accused.

15 Upon returning to the jury room, Juror Number 1
16 will act as your foreman unless he chooses not to so
17 act, that is the gentleman seated closest to me.
18 If he chooses not to do so, you then can elect one
19 of your members as your foreman and he will preside
20 over your deliberations and will be your spokesman
21 here in Court.

22 If it becomes necessary during your
23 deliberations to communicate with the Court, you may
24 send in a note by way of the deputy marshal who will
25 be assigned, by way of your foreman, or by one or more

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2 members of the jury. No member of the jury should
3 ever attempt to communicate with the Court by any
4 means other than a signed writing and the Court will
5 never communicate with any member of the jury on
6 any subject touching on the merits of the case
7 otherwise than in writing, or orally here in open
8 Court.-

9 You will note from the oath shortly to be
10 taken by the deputy marshals that they, too, as well
11 as all other persons, are forbidden to communicate
12 in any way or manner with members of the jury on any
13 matter touching upon the merits of the case. Now,
14 bear in mind also that you are never to reveal to
15 any person, not to me, the Court, how the jury
16 stands numerically or otherwise on the question of
17 the guilt or innocence of the accused until after
18 you have arrived at a unanimous verdict.

19 Do not send me a note saying that we stand
20 6 to 4, or such and such or vice versa.

21 If you are hopelessly deadlocked, which I
22 hope never occurs, then write me a note and say,
23 "Hopelessly deadlocked." Don't tell me how you stand.
24 When and if you reach a unanimous verdict with
25 respect to each of the counts, provide me with a

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2 note and state, "We have reached a unanimous verdict
3 with respect to each of the counts." And you will
4 announce your verdict here in open Court, not in a
5 note to me.

6 Those are the instructions of the Court, and
7 consider them as a whole. As I said at the outset,
8 consider them in the same way that you consider the
9 evidence and the exhibits, as a whole, and I am
10 now going to take a few minutes to discuss these
11 instructions with the attorneys, and I will recall
12 you and the alternate jurors will be discharged,
13 and then I will give you the opportunity to
14 deliberate on the question but not before then.

15 So now, don't discuss the case, and we will
16 have a five-minute recess. We will call you back
17 shortly.

18 (Jury leaves Courtroom.)

19 THE COURT: Mr. Burn?

20 MR. BURN: Nothing, your Honor.

21 THE COURT: Bring in the jury.

22 (Jury returns to the Courtroom.)

23 THE COURT: Now, the four alternate jurors,
24 your time has come, unfortunately for you, none of
25 the other jurors got hit by a trolley car. You will

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2 all be excused. You go with the thanks of the
3 Court. You should check out downstairs with the
4 Central Jury Clerk. I don't know whether they
5 have further work for you or not, but he'll tell
6 you what to do.

7 Pick up your cards now from Mr. Nims. Go out
8 the back room and go down to the Central Jury Part.
9 The other jurors, remain seated.

10 (Whereupon, the alternate jurors were
11 excused.)

12 THE COURT: Deputy marshals, will you step
13 forward, please.

14 (Whereupon, two deputy marshals were sworn in
15 by the Clerk of the Court.)

16 THE COURT: Now, ladies and gentlemen, you may
17 discuss the case.

18 (Whereupon, the jurors were excused from the
19 Courtroom to begin deliberations.)

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United States of America vs.

United States District Court for
Eastern Dist of NY.

DEFENDANT

FRANK TILLMAN LEWIS

DOCKET NO.

77 CR 54(s)

JUDGMENT AND PROBATION/COMMITMENT ORDER

AQ-245 (6/74)

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH 4 DAY 29 YEAR 1977

COUNSEL

☐ WITHOUT COUNSEL

However, the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Christopher Termini

(Name of Counsel)

FILED

IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea,

☐ NOLO CONTENDERE,

MAJ 09 1977

TIME A.M.

P.M.

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY.

on counts 1, 2 & 3

FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of violating T-18, U.S.C. Secs. 371, 2113(a)(d) and 2, in that commencing at a time unknown to the grand jury and continuing until at least Jan. 3, 1977, the defendant, with another, did knowingly and wilfully conspire to commit offenses against the U.S. by conspiring to take by force, violence and intimidation, from the persons of employees of the Barclay Bank of N.Y., 2215 Church Ave Brooklyn, N.Y., approximately \$11,822.91 in U.S. currency, which money was in the care, custody, control, management and possession of said bank and in the commission thereof did use a dangerous weapon

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

SENTENCE
OR
PROBATION
ORDER

IT IS ADJUDGED on count 2 that defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a term of twenty-five (25) years and that the defendant shall become eligible for parole under T-18 - U.S. Code, Sec. 4205(b)(2) at such time as the Parole Commission may determine.

SPECIAL
CONDITIONS
OF
PROBATION

IT IS ADJUDGED on count 1 that defendant is hereby committed to the custody of the Attorney General or his authorized representative for a term of five (5) years and that defendant shall become eligible for parole under T-18, U.S.C. Sec. 4205 (b)(2) at such time as the Parole Commission may determine. Said sentence on count 1 to run consecutively to the sentence imposed on count 2. Count 3 is merged in count 2 hence no sentence shall be imposed.

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☐ U.S. District Judge

☐ U.S. Magistrate

CERTIFIED AS A TRUE COPY ON

THIS DATE

4/29/77

By

CLERK

DEPUTY

Date

United States of America vs.

United States District Court

Eastern District of New York

DEFENDANT

FRANK TILLMAN LEWIS

DOCKET NO. 77 CR 54 (S)

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH DAY YEAR
5 11 77

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL Christopher Termini

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,

☐ NOLO CONTENDERE

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.

MAY 12 1977

There being a finding ~~NOT GUILTY~~ of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY.

TIME A.M. _____
P.M. _____

FINDING & JUDGMENT

Defendant has been convicted as charged of the offense(s) of violation of Title 18 U.S.C., §401, in that, on May 10th 1977, defendant did wilfully disobey a lawful order of the court

SENTENCE OR PROBATION ORDER

IT IS ADJUDGED on the citations of the witness Frank Tillman Lewis for contempt during the trial of his co-defendant that the defendant Frank Tillman Lewis is hereby committed to the custody of the Atty General or his authorized representative for imprisonment for a term of six (6) months

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☐ U.S. District Judge

☐ U.S. Magistrate

Date

May 12, 1977

52

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT ED. N.Y.

FEB 8 1977

UNITED STATES OF AMERICA,

-against-

FRANK TILLMAN LEWIS,

Defendant.

NOTICE OF MOTION TO SUPPRESS

77 CR 54

S I R S :

PLEASE TAKE NOTICE, that upon the annexed affidavit of CHRIS TERMINI, duly sworn to this 7th day of February, 1977, the undersigned, on behalf of FRANK TILLMAN LEWIS, will move this Court, before the Honorable THOMAS C. PLATT, in the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York, on February 18, 1977, at 11:30 A.M., or as soon thereafter as counsel may be heard for an Order, pursuant to Rule 12(b)(3) and Rule 41(f) of the Federal Rules of Criminal Procedure, suppressing a loaded gun, seized from the defendant's room, as well as any and all out of Court photographic displays which, because they may have been impermissibly suggestive, could taint in-court identifications; and for such other and further relief as the Court may deem just and proper.

DATED: BROOKLYN, NEW YORK
February 7, 1977.

Yours, etc.,

WILLIAM J. GALLAGHER, ESQ.,
Federal Defender Services Unit
The Legal Aid Society
26 Court Street, Room 701
Brooklyn, New York 11242

TO: DAVID G. TRAGER, ESQ.,
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

CLERK, UNITED STATES DISTRICT COURT
BROOKLYN, NEW YORK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA, :
 :
 -against- :
FRANK TILLMAN LEWIS, :
 :
 Defendant.:
-----X

STATE OF NEW YORK) SS:
COUNTY OF KINGS)

CHRIS TERMINI, being duly sworn, deposes and says:

1. He is an attorney associated with WILLIAM J. GALLAGHER, ESQ., Federal Defender Services Unit/The Legal Aid Society, the attorney of record assigned under the Criminal Justice Act to represent the defendant herein, FRANK TILLMAN LEWIS.

2. This affidavit is submitted in support of a motion, made pursuant to Rule 12(b) and Rule 41(f) of the Federal Rules of Criminal Procedure, for an order suppressing a loaded gun seized from the defendant's room, as well as any and all out of Court photographic displays which, because they may have been impermissibly suggestive, could taint in-court identifications and for such other and further relief as the Court may deem just and proper. This affidavit is based on conversations with FRANK TILLMAN LEWIS, Assistant United States Attorney, Cheryl Schwartz, a preliminary hearing, and discovery materials made available by the Government.

3. The defendant, FRANK TILLMAN LEWIS, entered a plea of not guilty on January 15, 1977.

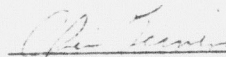
4. The United States, by its counsel, Cheryl Schwartz, Assistant United States Attorney, has indicated that it intends to use as evidence against the defendant, FRANK TILLMAN LEWIS, a loaded gun seized from the room of the defendant.

5. The Government claims that a loaded gun was found under the bed of the defendant's room.

Counsel requests that a hearing be held to determine if Government agents acted legally in obtaining this gun from under the bed, or if this gun was in plain sight at the time this gun was seized.

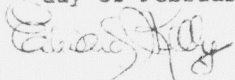
6. Your deponent has been advised that there were photographic displays made to several Government witnesses. The exact nature of the photographic spread is unknown to counsel. It is submitted that a hearing should be held to determine if these photographic displays were impermissibly suggestive, bearing in mind the criteria in Simmons v. United States, 390 U. S. 377 at 383, 384.

WHEREFORE, it is respectfully urged that an order be entered suppressing the loaded gun taken from the defendant's room as well as any and all out of Court photographic displays, and for such other and further relief as to the Court may seem just and proper.



CHRIS TERMINI

Sworn to before me this
7th day of February, 1977.



EDWARD J. KELLY
Notary Public, State of New York
No. 44-7214731
Qualifying: King County, N.Y.
1976

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

-----X
UNITED STATES OF AMERICA, :

-against- :

FRANK TILLMAN LEWIS, :

Defendant. :
-----X

★ APR 20 1977 ★
NOTICE OF MOTION TO
SET ASIDE VERDICT
77 CR 54 (S-1) E-1

S I R S :

PLEASE TAKE NOTICE, that upon the annexed affidavit of
CHRIS TERMINI, duly sworn to this 20th day of April, 1977, the
undersigned, on behalf of FRANK TILLMAN LEWIS, will move this
Court, before the Honorable THOMAS C. PLATT, in the United
States District Court for the Eastern District of New York,
225 Cadman Plaza East, Brooklyn, New York on April 29, 1977 at
10:00 A.M., or as soon thereafter as counsel may be heard for
an Order, pursuant to Rule 29(c) of the Federal Rules of Criminal
Procedure, to set aside the verdict of guilty and to enter a
judgment of acquittal, and for such other and further relief as
the Court may deem just and proper.

DATED: BROOKLYN, NEW YORK
April 20, 1977

Yours, etc.,

WILLIAM J. GALLAGHER, ESQ.,
FEDERAL DEFENDER SERVICES UNIT
THE LEGAL AID SOCIETY
26 Court Street, Room 701
Brooklyn, New York 11242

TO: DAVID G. TRAGER, ESQ.,
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

CLERK, UNITED STATES DISTRICT COURT
BROOKLYN, NEW YORK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA, :
-against- : AFFIDAVIT
FRANK TILLMAN LEWIS, : 77 CR 54 (S-1)
Defendant. :
-----X

STATE OF NEW YORK)
COUNTY OF KINGS) SS:

CHRIS TERMINI, being duly sworn, deposes and says:

1. He is an attorney associated with WILLIAM J. GALLAGHER, ESQ., Federal Defender Services Unit/The Legal Aid Society, the attorney of record assigned under the Criminal Justice Act to represent the defendant herein, FRANK TILLMAN LEWIS.

2. This affidavit is submitted in support of a motion, made pursuant to Rule 29(c) of the Federal Rules of Criminal Procedure, for an order to set aside the verdict of guilty and to enter a judgment of acquittal, and for such other and further relief as the Court may deem just and proper. This affidavit is based on the jury trial of the United States of America against FRANK TILLMAN LEWIS, which resulted in a verdict of guilty of the three counts charged in the indictment.

3. It is respectfully submitted there was insufficient evidence as to the physical identification of the second individual stationed at or near to the entrance of the bank, who allegedly robbed the bank specified in the indictment.

A. The first witness called by the United States of America, BRYAN WALKER, the bank manager, did not identify in court the defendant, FRANK TILLMAN LEWIS, as the man who helped rob the named bank.

B. The second witness called by the United States of America, TURNER DAVIS, the security guard of the bank, did

not identify in court the defendant, FRANK TILLMAN LEWIS, as the man who helped rob the named bank.

C. The third witness called by the United States of America, LYDIA SANTIAGO, a bank teller, did not identify in court the defendant, FRANK TILLMAN LEWIS, as the man who helped rob the named bank.

D. The fourth witness called by the United States of America, NORMA SHARPE, a customer in the bank, identified the defendant, FRANK TILLMAN LEWIS, from a photo spread on two occasions. However, when Norma Sharpe was in Court, she identified a United States Marshal and not the defendant as the perpetrator of the crime.

E. The fifth witness called by the United States of America, concerning the identification of the bank robber was VINCENT BROWNE, a customer in the bank and a former policeman. He did not identify in Court, the defendant, FRANK TILLMAN LEWIS, as the man who helped rob the named bank.

4. The United States of America relies primarily on three areas of evidence, a brown leather coat, and the testimony of Vincent Browne and Richard Casciano to show a physical identification of the defendant at the bank.

A. A brown leather coat found in defendant's hotel room was introduced in evidence as a type of the coat worn by the bank robber. Lydia Santiago stated that this coat was similar to the coat worn by the bank robber. Norma Sharpe stated that the coat was not the same as the coat worn by the bank robber, that the coat was a short leather coat not a full length coat. Vincent Browne stated that the coat was much brighter than the coat introduced in evidence. It is noted that Richard Casciano, the driver of the limousine, had stated to agents that the defendant was wearing a dark blue trenchcoat.

B. Vincent Browne stated that he followed the individual who robbed the bank, the man with a bright leather coat,

to a limousine double parked on Flatbush Avenue. Mr. Browne recorded the license number of this limousine.

C. Richard Casciano was the driver of the limousine. He stated that he was the driver for two men, one of which was FRANK TILLMAN LEWIS, and that he double parked the car on Flatbush Avenue and the two passengers got out. After a period of time these two people re-entered the vehicle. While Mr. Casciano could not recall the color of the clothing that FRANK TILLMAN LEWIS wore. He did recall a trenchcoat. Furthermore, Agent Farrell testified that he was aware that Mr. Casciano had originally described the trenchcoat as dark blue. Additionally, witnesses had testified that plastic bags and a briefcase were used and displayed in the bank. Mr. Casciano gave no testimony as to any of the two individuals in his limousine having anything in their hands or in their possession.

D. The above testimony is speculative and illogical and cannot stand as any basis for an identification.

5. The Government relies heavily on testimony that two guns were found in the defendant's hotel room. One of these guns is the gun which was taken from the Security Guard during the robbery. The other gun that was found was used in the robbery, since it was established by a ballistics expert that bullets that were found in the bank, were fired by this gun. It is noted that these guns were found eleven days after the robbery. Additionally, the Government relies heavily on an alleged statement made by the defendant, namely, "I'm guilty, money is my bag."

A. Agent Farrell testified that he found one of the guns underneath the bed, upon which the defendant had been placed. He stated that the defendant had told him where to find this gun and that the defendant told Agent Booth where to find the other gun and that he secured the gun in a piece of luggage. Agent Farrell also stated that the defendant gave Agent Booth the oral combination to the lock. Agent Farrell testified that he had pre-

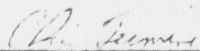
viously searched underneath the bed, but he found nothing, since the lights were not on. Additionally, he gave no testimony as to any statements made by the defendant.

B. Agent Booth testified that the defendant made an admission to him, while the defendant was on the bed. He stated that there were three or four other agents around the bed, when the statement was said. Agent Booth testified that he was the first person to enter the hotel room and that he put on the lights after he took two or three steps, a matter of seconds. Agent Booth also gave no testimony as to retrieving a gun from any luggage or seeing Agent Farrell retrieve a gun from under a bed. Additionally, he testified that the defendant was taken to another hotel room for at least one half hour, while Agent Farrell could not recall if the defendant was taken anywhere outside the room.

C. It is respectfully submitted that this type of conflicting and uncorroborative evidence cannot convict any person as a matter of law.

6. In light of the absence of identification testimony, the testimony of the Agents, even if believed, cannot alone convict the defendant. The evidence testified to by the Agents raises a substantial suspicion that the defendant robbed the bank, but because of the time interval between the incident and the arrest, it does not show the defendant guilty beyond a reasonable doubt.

WHEREFORE, it is respectfully urged that an order be entered to set aside the verdict of guilty and to enter a judgment of acquittal, and for such other and further relief as to the Court may seem just and proper.


CHRIS TERMINI

Sworn to before me this

20th day of April, 1977.


PHILIP R. KATOWITZ
Notary Public, State of New York
No. 24-4518123
Qualified in Kings County
Term Expires March 30, 1978

UNITED STATES GOVERNMENT

Memorandum

TO : Honorable Thomas C. Platt
United States District Judge

FROM : Cheryl M. Schwartz
Assistant U.S. Attorney

SUBJECT: U.S. v. FRANK TILLMAN LEWIS
77 CR 54

DATE: February 8, 1977

Docket and File

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.

★ FEB 8 1977 ★
TIME A.M.
P.M.

In response to your Honor's inquiries about an agreeable trial date, I would like to note that I shall be away from this district from February 17 through March 1. Although I would prefer a trial date no earlier than March 7, I would be prepared for trial as of March 2.

More importantly, however, the defendant in this case was indicted yesterday along with one Robinson Quinones, in 77 CR 54(S); the defendants are charged with violations of §371, §2113(a) and §2113(d), arising from the same set of circumstances forming the basis for the underlying indictment 77 CR 54. The whereabouts of Mr. Quinones are presently unknown, and he has been avoiding apprehension since at least January 15, 1977, the day of Mr. Lewis' arrest and incarceration. A bench warrant for the apprehension of Mr. Quinones has been issued, and the FBI has been and will continue to try to locate and arrest him.

In view of the foregoing the Government respectfully requests a reasonable delay before trying Mr. Lewis to give us an opportunity to apprehend Mr. Quinones and to try the defendants together. We believe that since Mr. Lewis has been incarcerated for only 25 days as of today the judicial economy resulting from a joint trial in the event of Mr. Quinones' arrest warrants granting the request.

Cheryl M. Schwartz
CHERYL M. SCHWARTZ

cc: Chris Termini, Esq.
Legal Aid Society

CMS/sj

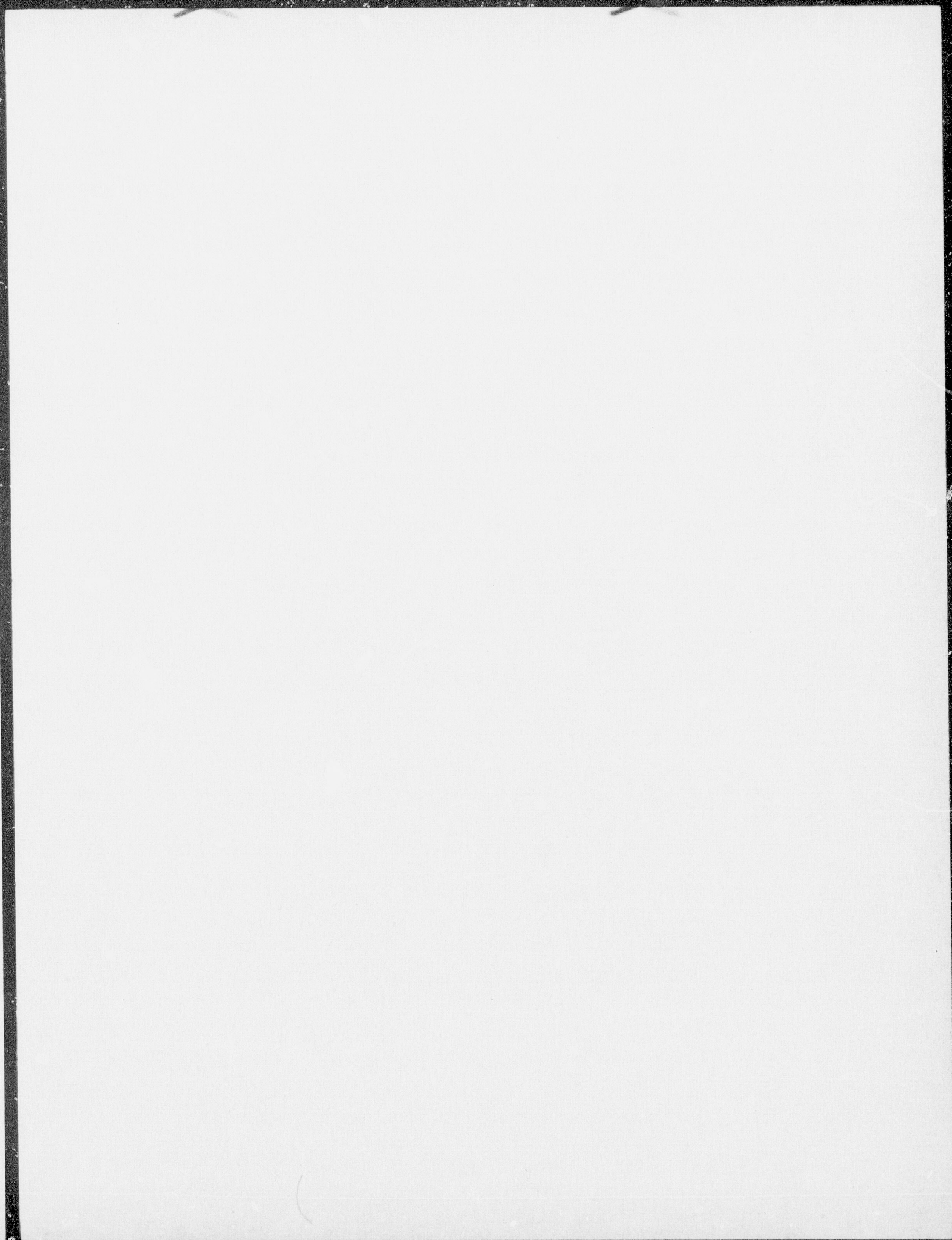


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Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

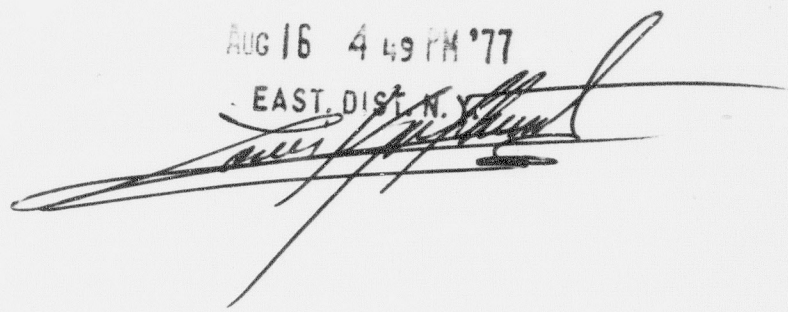
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RECEIVED
U. S. ATTORNEY

AUG 16 4 49 PM '77

EAST. DIST. N. Y.

A large, stylized handwritten signature in dark ink is written over the text "EAST. DIST. N. Y." and extends upwards and to the left.